

APPENDIX.
STATUTES AND REGULATIONS INVOLVED.

Revenue Act of 1932, c. 209, 47 Stat. 169:

SEC. 501. IMPOSITION OF TAX.

(a) For the calendar year 1932 and each calendar year thereafter a tax, computed as provided in section 502, shall be imposed upon the transfer during such calendar year by any individual, resident or nonresident, of property by gift.

(b) The tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible; but, in the case of a nonresident not a citizen of the United States, shall apply to a transfer only if the property is situated within the United States. The tax shall not apply to a transfer made on or before the date of the enactment of this Act.

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SEC. 509. PAYMENT OF TAX.

(a) *Time of Payment.*—The tax imposed by this title shall be paid by the donor on or before the 15th day of March following the close of the calendar year.

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SEC. 510. LIEN FOR TAX.

The tax imposed by this title shall be a lien upon all gifts made during the calendar year, for ten years from the time the gifts are made. If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. * * *

SEC. 513. [as amended by Sec. 501, Revenue Act of 1934, c. 277, 48 Stat. 680] ASSESSMENT AND COLLECTION OF DEFICIENCIES.

(a) *Petition to Board of Tax Appeals.*—If the Commissioner determines that there is a deficiency in respect of the tax imposed by this title, the Commissioner is authorized to send notice of such deficiency to the donor by registered mail. Within 90 days after such notice is mailed (not counting Sunday or legal holiday in the District of Columbia as the ninetieth day), the donor may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. No assessment of a deficiency in respect of the tax imposed by this title and no restraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the donor, nor until the expiration of such 90-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of section 3224 of the Revised Statutes the making of such assessment or the beginning of such proceeding or restraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

For exceptions to the restrictions imposed by this subsection see—

- (1) Subsection (d) of this section, relating to waivers by the donor;
- (2) Subsection (f) of this section, relating to notifications of mathematical errors appearing upon the face of the return;
- (3) Section 514, relating to jeopardy assessments;

(4) Section 516, relating to bankruptcy and receiverships; and

(5) Section 1001 of the Revenue Act of 1926, as amended, relating to assessment or collection of the amount of the deficiency determined by the Board pending court review.

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SEC. 517. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION.

(a) *General Rule.*—Except as provided in subsection (b), the amount of taxes imposed by this title shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of three years after the return was filed.

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SEC. 526. TRANSFERRED ASSETS.

(a) *Method of Collection.*—The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in the tax imposed by this title (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) *Transferees.*—The liability, at law or in equity, of a transferee of property of a donor, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed by this title.

(2) *Fiduciaries.*—The liability of a fiduciary under section 3467 of the Revised Statutes [U. S. C.,

title 31, sec. 192] in respect of the payment of any such tax from the estate of the donor.

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

(b) *Period of Limitation.*—The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the donor.

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(d) *Suspension of Running of Statute of Limitations.*—The running of the statute of limitations upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under section 513 (a) to the transferee or fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.

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(f) *Definition of "Transferee".*—As used in this section, the term "transferee" includes donee, heir, legatee, devisee and distributee.

(g) *Address for Notice of Liability.*—In the absence of notice to the Commissioner under section 527 (b) of the existence of a fiduciary relationship, notice of liability enforceable under this section in respect of a tax imposed by this title, if mailed to the person subject to the liability at his last known address, shall be sufficient for the purposes of this title even if such person is deceased, or is under a

legal disability, or, in the case of a corporation, has terminated its existence.

SEC. 527. NOTICE OF FIDUCIARY RELATIONSHIP.

(a) *Fiduciary of Donor*.—Upon notice to the Commissioner that any person is acting in a fiduciary capacity such fiduciary shall assume the powers, rights, duties, and privileges of the donor in respect of a tax imposed by this title (except as otherwise specifically provided and except that the tax shall be collected from the estate of the donor), until notice is given that the fiduciary capacity has terminated.

(b) *Fiduciary of Transferee*.—Upon notice to the Commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 526, the fiduciary shall assume, on behalf of such person, the powers, rights, duties, and privileges of such person under such section (except that the liability shall be collected from the estate of such person), until notice is given that the fiduciary capacity has terminated.

(c) *Manner of Notice*.—Notice under subsection (a) or (b) shall be given in accordance with regulations prescribed by the Commissioner with the approval of the Secretary.

SEC. 1111. DEFINITIONS.

(a) When used in this Act—

(1) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

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(6) The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conserva-

tor, or any person acting in any fiduciary capacity for any person.

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(b) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

Revenue Act of 1943:

Sec. 502. Certain Discretionary Trusts in Connection with Gift Tax.

(a) Amendment of the Internal Revenue Code.—Section 1000 of the Internal Revenue Code (imposing the gift tax) is amended by inserting at the end thereof the following:

"(e) Certain Discretionary Trusts.—In the case of property in a trust created prior to January 1, 1939, if on and after January 1, 1939, no power to revest title to such property in the grantor could be exercised either by the grantor alone, or by the grantor in conjunction with any other person not having a substantial adverse interest in the disposition of such property or the income therefrom, then a relinquishment by the grantor on or after January 1, 1940, and prior to January 1, 1945, of power or control with respect to the distribution of such property or the income therefrom by an exercise of other termination of such power or control shall not be deemed a transfer of property for the purposes of this chapter. If such property was transferred in trust, the grantor not retaining such power to revest title thereto in himself, or if such power to revest title to such property in the grantor was relinquished, while a law was in effect imposing a tax upon the transfer of property by gift, this subsection shall apply only if (1) gift tax was paid

with respect to such transfer or relinquishment, and not credited or refunded, or a gift tax return was made within the time prescribed on account of such transfer or relinquishment but no gift tax was paid with respect to such transfer or relinquishment because of the deductions and exclusions claimed on such return, and (2) the grantor consents, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, for all purposes of this chapter to treat such transfer or relinquishment in the calendar year in which effected, and for all periods thereafter, as having been a transfer of property subject to tax under this chapter. This subsection shall not apply to any payment or other disposition of income occurring prior to the termination of power or control with respect to the future disposition of income from the trust property."

(b) Amendment of Revenue Act of 1932.—Section 501 of the Revenue Act of 1932 (imposing a gift tax) is amended by inserting at the end thereof the following:

"(c) Certain Discretionary Trusts.—In the case of property in a trust created prior to January 1, 1939, if on and after January 1, 1939, no power to re-vest title to such property in the grantor could be exercised either by the grantor alone, or by the grantor in conjunction with any other person not having a substantial adverse interest in the disposition of such property or the income therefrom, then a relinquishment by the grantor on or after January 1, 1939, and prior to January 1, 1940, of power or control with respect to the distribution of such property or the income therefrom by an exercise or other termination of such power or control shall not be deemed a transfer of property for the purposes of this title. If such property was transferred

in trust, the grantor not retaining such power to revest title thereto in himself, or if such power to revest title to such property in the grantor was relinquished, while a law was in effect imposing a tax upon the transfer of property by gift, this subsection shall apply only if (1) gift tax was paid with respect to such transfer or relinquishment, and not credited or refunded, or a gift tax return was made within the time prescribed on account of such transfer or relinquishment but no gift tax was paid with respect to such transfer or relinquishment because of the deductions and exclusions claimed on such return, and (2) the grantor consents, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, for all purposes of this title to treat such transfer or relinquishment in the calendar year in which effected, and for all periods thereafter, as having been a transfer of property subject to tax under this title. This subsection shall not apply to any payment or other disposition of income occurring prior to the termination of power or control with respect to the future disposition of income from the trust property."

(e) Interest on Overpayments.—No interest shall be allowed or paid on any overpayment resulting from the application of this section.

Section 3791(b), Internal Revenue Code:

Retroactivity of Regulations or Rulings.—The Secretary, or the Commissioner with the approval of the Secretary, may prescribe the extent, if any, to which any ruling, regulation, or Treasury Decision, relating to the internal revenue laws, shall be applied without retroactive effect.

Treasury Regulations 79 (1936 ed.):

ART. 3. *Cessation of donor's dominion and control.*—The tax is not imposed upon the receipt of the property by the donee, nor is it necessarily determined by the measure of enrichment resulting to the donee from the transfer, nor is it conditioned upon ability to identify the donee at the time of the transfer. On the contrary, the tax is a primary and personal liability of the donor, is an excise upon his act of making the transfer, is measured by the value of the property passing from the donor, and attaches regardless of the fact that the identity of the donee may not then be known or ascertainable.

As to any property, or part thereof or interest therein, of which the donor has so parted with dominion and control as to leave in him no power to cause the beneficial title to be revested in himself, the gift is complete. But a transfer (in trust or otherwise), though passing both legal and beneficial title, is still in essence merely formal so long as there remains in the donor a power to cause the re vesting of the beneficial title in himself, and the gift, from the standpoint of substance, remains incomplete during the existence of the power. A donor shall be considered as having the power to re vest in himself the beneficial title to the property transferred if he has such power in conjunction with any person not having a substantial adverse interest in the disposition of the property or the income therefrom. A trustee, as such, is not a person having a substantial adverse interest in the disposition of the trust property or the income therefrom. The relinquishment or termination of the power, occurring otherwise than by the death of the donor (the statute being confined to transfers by living donors), is regarded as the event which completes the gift and causes the tax to apply. The receipt of income

or of other enjoyment of the transferred property by the transferee or by the beneficiary (other than by the donor himself) during the interim between the making of the formal transfer and the relinquishment or termination of the power operates to free such income or other enjoyment from the donor's power to receive it himself, and constitutes a gift of such income or of such other enjoyment taxable in the calendar year of its receipt.

If the donor contends that a power retained by him constitutes beneficial dominion and control, and that by reason thereof the transfer is not in substance a gift, the transaction shall be disclosed in the return and evidence showing all relevant facts, including a copy of the instrument by which the transfer was made, should be submitted.

Art. 21. Donees and trustees required to file notice of gifts.—All donees and trustees (except such organizations, etc., referred to in section 505 and article 13) receiving property transferred by gift in any one calendar year, shall file a notice on Form 710, unless the value of the gift, or the aggregate value of all the gifts, to the donee or to any one of the beneficiaries of the trust is \$5,000, or less, and the subject of the gift is not a future interest in property. Copies of this form may be obtained from any United States collector of internal revenue upon application. When a gift is made in trust notice thereof should be filed by either the beneficiary of the trust or the trustee, but in such case one notice only is required. If property is transferred in trust and the donor retains a power over the property, the notice (which is for information purposes only) should be filed even though it is considered that such power constitutes a retention of beneficial dominion and control and that by reason thereof the transfer is not a gift within the

meaning of the statute. The notice shall be filed in duplicate with the collector for the district in which the donor resides, or with the Commissioner of Internal Revenue at Washington, D. C., on or before the 15th day of March following the close of the calendar year in which the transfer was made. The notice shall disclose the following information: (1) Name and address of donor, (2) date of transfer, (3) a general description of the property transferred, and (4) the approximate value thereof at the date of the transfer.

ART. 61. *Notice of fiduciary relationship.*—As soon as the Commissioner receives notice that any person is acting in a fiduciary capacity, such fiduciary must, except as otherwise specifically provided, assume the powers, rights, duties, and privileges of the donor in respect of the tax. If the person is acting as a fiduciary for a transferee or other person subject to the liability specified in section 526 (see article 60), such fiduciary is required to assume the powers, rights, duties, and privileges of the transferee or other person under that section. * * * The "notice to the Commissioner" provided for in section 527 shall be a written notice signed by the fiduciary and filed with the Commissioner. This notice must state the name and address of the person for whom the fiduciary is acting and the nature of the liability of such person; that is, whether it is a liability for the tax, and, if so, the year or years involved, or a liability at law or in equity of a transferee of property of the donor, or a liability of a fiduciary under section 3467 of the Revised Statutes, as amended by section 518 of the Revenue Act of 1934, in respect of the payment of any tax from the estate of the donor. Satisfactory evidence of the authority of the fiduciary to act for such person in the fiduciary capacity must be filed with and made a part of the notice.

If the fiduciary capacity exists by order of court, a certified copy of the order may be regarded as such satisfactory evidence. When the fiduciary capacity has terminated, the fiduciary, in order to be relieved of any further duty or liability as such, must file with the Commissioner written notice that the fiduciary capacity has terminated as to him, accompanied by satisfactory evidence of the termination of the fiduciary capacity. The notice of termination should state the name and address of the person, if any, who has been substituted as fiduciary.

If the notice of the fiduciary capacity described in the preceding paragraph is not filed with the Commissioner prior to the sending of notice of a deficiency by registered mail to the last known address of the donor (see section 513 (a), as amended by section 501 of the Revenue Act of 1934), or the last known address of the transferee or other person subject to liability (see section 526), no notice of the deficiency will be sent to the fiduciary. In such a case the sending of the notice to the last known address of the donor, transferee, or other person, as the case may be, will be a sufficient compliance with the requirements of the Act, even though such donor, transferee, or other person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence. Under such circumstances if no petition is filed with the Board of Tax Appeals before the expiration of 90 days from the sending of the notice to the donor, transferee, or other person, the tax, or "liability under section 526, will be assessed immediately upon the expiration of such 90-day period, and demand for payment will be made by the collector. The term "fiduciary" is defined by section 1111 (a) (6) to mean guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.